Supreme Court, U.S.
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# In the Supreme Court of the United States

ROSEMARY BUTCHER,

*Petitioner*,

v.

UNITED STATES OF AMERICA; LAWYERS TITLE INSURANCE CORPORATION; FRED J. DERY,

*Respondents*.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

Whether Alexander's interest in the 17.83 acres of property held by the entireties went into Rosemary's bankruptcy estate?

Whether **any Judge** on October 16, 1991, the suit filing date, had jurisdiction to separate, divide, or apportion their entireties property among the Chapter 7 debtor, her husband, and his creditor?

Whether any judge, during the existence of the entireties tenancy, had jurisdiction to separate, divide, or apportion any part of their entireties property among the Chapter 7 debtor, her husband, and his creditor without having personal jurisdiction over both spouses?

Whether two federal judges in different federal districts can, at the same time, exercise separate jurisdiction over the interest of the non-debtor husband and the interest of the debtor wife in the same parcel of real property formerly held by the entireties after the non-debtor spouse has conveyed his interest to the debtor spouse?

Whether a bankruptcy trustee, over objection, can in good faith sell the "interest of the estate" before determining the validity of exemption claims, lien claims, and joint claims, and, the market value of the estate's assets?

Whether the bankruptcy trustee can in good faith sell the estate's interest in real property, assessed for at least $5,000,000.00 for the sum of $225,000.00 where the trustee will use the "sale price" proceeds to pay bankruptcy case administrative expenses and liens on "property" being sold, thereby giving windfalls to the "purchaser," the trustee and his attorney, and, the United States at Petitioner's expense?

Whether the trustee can pay the Government's lien claim out of estate funds, where the lower courts found the lien attached to non-bankruptcy property?

## PARTIES TO THE PROCEEDING

**Petitioner**

Petitioner is Rosemary C. Butcher, an individual, She is the debtor in the Eastern District of Michigan Bankruptcy Case No.: 91-02274 S.

**Respondents**

Respondents are: Lawyers Title Insurance Corporation, United States of America on behalf of the Internal Revenue Service, and Fred J. Dery, Petitioner's Bankruptcy Trustee.

Respondent Lawyers Title Insurance Corporation is a principal subsidiary of a publicly owned corporation, Land America Financial Group, Inc. Trustee Dery has made no appearance in these consolidated appeals.

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## JURISDICTION

The United States Court of Appeals for the Sixth Circuit issued its Opinion on February 18, 2003. Petitioners timely filed a Petition for Rehearing and Suggestion for Rehearing En Banc which the United States Court of Appeals denied on April 16, 2003. (App I, 37a).[1]

## OPINIONS BELOW

The Order of the United States Court of Appeals Dismissing these appeals is included as Appendix B (3a). No formal opinion was issued by the court. The Opinion and Order of the district Judge confirming the sale appears in Appendix C (6a)

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### U.S. Const., Amend. V
### Takings Clause

> No person shall . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

* * * * *

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[1] Citations to "APP" are to the Appendix filed with this Petition for Writ of Certiorari, pursuant to Supreme Court Rule 14(i).

Reference to Statutory sections are to Title 11, The Bankruptcy Code, unless otherwise indicated.

**Bankruptcy Code- Automatic Stay**
**11 U.S.C. § 362(a)**

**Section 362. Automatic stay**

(a) Except as provided in subsection (b) of this section, a petition filed under § 301,302, or 303 of this title, or an application filed under § 5 (a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of-

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

**Bankruptcy Code- Property of the Estate**
**11 U.S.C. 363 (h) and 541(a)(1) and (7)**

**§ 363. Use, sale, or lease of property**

(h) Notwithstanding subsection (f) of this section, the trustee may sell both the estate's interest,- under subsection (b) or (c) of this section, "and the interest of any co-owner in property in which the debtor had, at .the time of the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety, only if–

(1) partition in kind of such property among the estate, and such co-owners is impracticable;

(2) sale of the estate's undivided interest in such property would realize significantly less for the estate than sale of such property free of the interests of such co-owners;

(3) the benefit to the estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners; and

(4) such property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.

**Section 541. Property of the estate**

(a) The commencement of a case under § 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the

debtor in property as of the commencement of the case.

* * *

(7) Any interest in property that the estate acquires after the commencement of the case.

* * * *

**Bankruptcy Code- Exemptions**
**11 U.S.C. § 522(b)(2)(B)**

(b) Notwithstanding § 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection.

* * *

(B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law.

**District Court Exclusive Jurisdiction**
**28 U.S.C. § 1334(e)**

"(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate."

* * *

**Michigan Termination of Tenancy by Entirety Act**
**MCL 557.101,557.102**

Section 1. In all cases where husband and wife own any interest in land as tenants by the entirety, such tenancy by the entirety may be terminated by a conveyance from either one to the other of his or. her interest in the land so held.

Section 2. This act shall be deemed to be declaratory of the common law as heretofore existing in this state.

* * * * *

**Michigan Condominium Act**
**MCL 559.194- Title Insurance**

Section 94. The developer shall furnish a purchaser buying a condominium unit from the developer a title insurance policy, in the amount of the purchase price, by a title insurance company licensed to do business in the state.

**DEBTOR/PETITIONER'S**
**STATEMENT OF THE CASE**

This case involves interpretation of the Bankruptcy Code, 11 USC Sec 101, et seq as applied to real property held by the entireties by Alexander Butcher ("Alexander") and Rosemary Butcher ("Rosemary"), his wife. Three important subquestions are:

1. Did Alexander's interest go into Rosemary's Chapter 7 bankruptcy estate?

2. Did any Court have subject matter jurisdiction over a suit begun against Alexander's interest in the entireties property, before the entireties estate was terminated?

3. Was a "sale" of property assessed at over $5 million dollars for the sum of $225,000 made in good faith?

References will doubtless be made by both sides to these decided cases:

1. *United States v. Craft (Craft III),* 122 S. Ct. 1414 (2002) ("Craft")
2. *Butcher v. Blachy,* 532 US 994 (2001)
3. *Blachy v. Butcher*, 221 F.3d 896 (6th Cir. 2000) ("Blachy")

As to these cases, the reader should keep in mind:

1. No testimony was given.
2. Lawyers Title's factual versions often were untrue. See particularly, page 901 of 221 F 3d. There was no such title commitment issued on July 18, 1978.
3. Western District (Michigan) Judge Quist is not the Bankruptcy Judge. Any "bankruptcy" or "non-bankruptcy" ruling made by him was not binding on Rosemary or her trustee because they were not parties to that action.

The District Judge's version of the facts are set forth in Appendix C (6a). The lower courts, as well as respondents, take the position that Judge Quist's bankruptcy rulings in *Blachy are* binding on the courts in this case. Not so.

Rosemary filed her Chapter 7 Petition on March 1, 1991. Alexander, diagnosed with and anticipating his death by cancer, was sued by Lawyers Title, et al, in Michigan on

October 16, 1991. Unable to physically or mentally assist in his defense, he quit-claimed, in a deed signed only by him, his interest in 17.83 acres of real property acquired by himself and Rosemary on July 12, 1978 with their own money, to Rosemary.

The real property involved consists of 24 individual condominium units. Lawyers Title, for fees paid over some 10 years, issued dozens of title commitments and policies, each time missing the deed of July 12, 1978, to Alexander and Rosemary.

All of the deeds issued by the developer corporations were void because they erroneously listed the development corporation (owned or controlled by Alexander) as the owner(s). Lawyers Title admits that neither it nor its agent checked the public record or discovered the deed to the couple which was recorded on July 14, 1978. Lawyers Title thinks Alexander and Rosemary should deed the property to its insureds. Rosemary does not agree.

In *Blachy,* the lower courts all held that Alexander's interest never went into Rosemary's estate. This Court, in *Owen v. Owen,* 111 S Ct 1833, 1835, 1836 (1991) would appear to hold otherwise. If so, or if Judge Quist had no jurisdiction, some corrective action should be taken by this Court. The various circuits are in complete disarray on the questions.

The real property market value on December 31, 2001, was in excess of $5 million dollars. [App P, 57a]. On March 1, 1991, Petitioner filed a Chapter 7 Petition in Bankruptcy Court in the Eastern District Court of Michigan. It was apparently to be a no asset case. In approximately May of 1991, she was informed by Lawyers Title that she and her husband, Alexander, were still title holders to 17.83 acres of real property which they had purchased in 1978.

As of October 15, 1991, Lawyers Title had filed claims with the Bankruptcy Court on behalf of 24 persons or entities who or which sought generally either a constructive trust over a particular condominium on the real property, or, in the alternative, monetary damages. Lawyers Title claimed to have insured the title to 12 of the units and further claimed authority to act on behalf of all 24 of the entities claiming to own the individual units. It is not clear how Lawyers Title has standing to act in the federal courts on behalf of those named Plaintiffs whose "titles" were not insured by Lawyers Title.

Lawyers Title had missed the deed to Rosemary and Alexander as the condominiums were built, probably more than 100 times, over a 10 year period beginning in 1981. The development corporations were owned or controlled by Alexander. Rosemary owned no stock in either corporation. As required by state law, MCL 559.194, each development corporation provided and paid for a title insurance policy furnished to each "purchaser," which was issued by Lawyers Title.

The insured claims, filed by Lawyers Title in Rosemary's bankruptcy case, all asserted each to be an individual creditor of Rosemary, from which her entireties interests are exempt.

## REASONS FOR GRANTING THE WRIT

I. The 17.83 acres all went into Rosemary's bankruptcy estate. U.S. Const. Am V.

II. The questions presented are important.

III. Under Michigan and federal law, no judge had subject

matter jurisdiction on 10-16-91 to separate, divide, or apportion any part of the 17.83 acre parcel of real estate among the spouses, or to anyone else, because the tenancy had not been terminated.

IV. Under Michigan and federal law, no judge had personal jurisdiction after 10/30/91 to separate, divide, or apportion any part of the 17.83 acre parcel of real estate among the spouses, or to anyone else, because the tenancy had been terminated, and, the 6th Circuit held that Alexander's and Rosemary's entireties interest did not merge.

V. Quit-claiming a spouse's entireties interest to the debtor spouse cannot be fraudulent.

VI. Rosemary is entitled to any surplus.

VII. The Western District Judge had no jurisdiction to decide the issues relating to Petitioner's bankruptcy proceedings.

VIII. The sale of the estate's interest was not made in good faith.

IX. The bankruptcy code permits a debtor to avoid the imposition

of a post-petition constructive trust.

## ARGUMENT

Petitioner urges the Court to grant this Petition for Writ of Certiorari for the following reasons:

**I. The 17.83 acres all went into Rosemary's bankruptcy estate.** The sixth Circuit Panel held in *Blachy* that only Rosemary's interest in the 17.83 acres went into her estate (pp 907-908 of 221 F.3d). If this legal analysis is incorrect, none of the proceedings in the lower courts limiting Rosemary's claims of title are valid.

Petitioner suggests that the non-debtor spouse's interest in entireties property goes into the debtor spouse's bankruptcy estate because the debtor spouse has bare legal title to the other spouse's interest, where the couple's equities in the property cannot pay all of their joint creditors, and the debtor spouse has, with the other spouse, the equitable title to all of their entireties property valued in excess of the amount necessary to pay all of their joint creditors.

As this Court stated in *Owen v. Owen,* 111 S. Ct. 1833 (1991), property must go into a bankruptcy estate before it can be exempted from the claims of a debtor's creditors. This Court said, pp 1835-1836:

> "[1] An estate in bankruptcy consists of all the interests in property, legal and equitable, possessed by the debtor at the time of filing, as well as those interests recovered or recoverable through transfer and lien avoidance provisions. An exemption is an interest withdrawn from the estate (and hence from the creditors) for the benefit of the debtor. Section 522 determines what property a debtor may exempt.

> Property that is properly exempted under Sec 522 is (with some exceptions) immunized against liability for prebankruptcy debts. Sec 522(c). No property can be exempted (and thereby immunized), however, unless it first *falls within* the bankruptcy estate. Section 522(b) provides that the debtor may exempt certain property "from property of the estate;" obviously, then, an interest that is not possessed by the estate cannot be exempted. Thus, if a debtor holds only bare legal title to his house - if, for example, the house is subject to a purchase-money mortgage for its full value - then only that legal interest passes to the estate; the equitable interest remains with the mortgage holder, Sec 541(d). And *since* the equitable interest does not pass to the estate, neither can it pass to the debtor as an exempt interest in property. Legal title will pass, and can be the subject of an exemption; but the property will remain subject to the lien interest of the mortgage holder. This was the rule of *Long v. Bullard,* 117 US 617, 6 S Ct 917, 29 LEd 1004 (1886), codified in Sec 522. Only where the Code empowers the court to avoid liens or transfers can an interest originally not within the estate be passed to the estate, and subsequently (through the claim of an exemption) to the debtor." (Emphasis supplied).

The 6th Circuit panel in this case did not address the jurisdictional questions raised by Petitioner in these appeals. The panel in *Blachy v Butcher* held that the non-debtor husband's interest in the entireties estate did not go into Rosemary's bankruptcy estate, as she had argued, pp 907-908, F 221 F 3d, the Court somewhat cryptically concluding that:

> "By recognizing an interest in entireties property that is part of a debtor's bankruptcy estate, *In re Arango*

> implicitly recognized the corresponding interest that would not be part of the debtor's estate."

But, like exemptions which can be claimed in entireties property by the debtor, there is no reason why the non-exempt interest of the non-debtor spouse does not go into the estate, permitting the couple's joint creditors to collect out of the couple's non-exempt entireties property in one proceeding. The revenue code and the bankruptcy codes are subject to final interpretation by the federal courts. Nobody could rationally distinguish between the phrase:

> "upon all property and rights to property, whether real or personal, belonging to such person"

used in 26 USC Sec 6321 and the phrase:

> "all legal or equitable interests of the debtor in property as of the commencement of the case"

used in Sec 541. All goes in; some comes out. Entireties properties cannot "come out" of a debtor's estate until after the property is appraised, exemptions have been determined, and joint claims have been ruled upon. 26 USC Sec 6321 and Sec 541 simply provide procedures for separating otherwise inseparable legal interests deemed appropriate by the Congress.

Where the allowed lien and joint creditor claims exceed the couple's equity, the filing of one or both spouses passes both legal and equitable title to the entireties property to the bankruptcy estate. But, where their equity exceeds allowed lien and joint claims, the legal and equitable title to the surplus comes back out to the couple as exempt entireties property. A conveyance to the debtor spouse by the non-debtor spouse, while the trustee controls the debtor's right of survivorship, is at most a conveyance of the grantor's legal title because the grantee spouse is already "seized with the

whole; however much (or little) that may be, *Dickey v. Converse,* 117 Mich 449, 455 (1898).

If the entireties interest of the non-debtor spouse goes into the debtor spouse's bankruptcy estate, then the automatic stay provisions of Sec 362(a)(1) apply. The automatic stay was never lifted to permit the filing of the *Blachy* suit against Alexander.

**II. The questions presented are important.** The Opinion in *In Re Trickett,* 14 BR 85, 86 (1981) recites that some fifteen states still retain the common law estate of tenancy by the entirety. Before April 17, 2002, the interest of a non-delinquent entireties tenant could never be reduced by the attachment of a federal tax lien on the other spouse's interest in their property held by the entireties. Before this case, for more than 150 years, no Plaintiff, claiming to be the creditor of only one tenant/spouse, has in Michigan succeeded in recovering against the entireties estate upon that allegation.

The *Blachy v Butcher* Plaintiffs were unable to cite any Michigan case imposing a constructive trust on property purchased with the grantees' own money, as here. Their claims more nearly resemble a "reverse" equitable conversion action. The insureds parted with money; they received title insurance policies (paid for by the development corporation) supposedly guaranteeing repayment of their purchase monies in the event their titles proved defective.

The question could be posed as whether the Court's decision in *United States v. Craft,* 122 S. Ct. 1414 (2002), changed in any way state entireties laws as to claimed private creditors? Lawyers Title admits that it did **not** search the public records, as it was paid to do, over a ten year period, but claims it has no liability for its failures to perform its contractual obligations. In bankruptcy proceedings, the question would seem to be "when, if ever, do the interests of

the spouses separate - (1) before filing; (2) upon filing; or (3) upon termination of the entireties tenancy?

The 6th Circuit held in *Blachy* at p 907 of 221 F.3d, that Rosemary's interest "became part of her bankruptcy estate when she filed on March 1, 1991." It held, pp 907-908 that Alexander's October 30, 1991, conveyance to Rosemary "terminated the tenancy by the entirety," and that Alexander's "interest" did not go into Rosemary's estate.

But, if Rosemary's entireties interest went into her bankruptcy estate on the March 1, 1991, Petition filing date, and, if no part of Alexander's interest went into her estate on the same date and at the same time, the two interests would have been separated **before** the entireties estate was terminated. The bankruptcy code contains no provision that an entireties estate is terminated upon the filing of a Chapter 7 Petition. The entire 17.83 acres had to go into Rosemary's bankruptcy estate because she owned the whole property.

Alexander, too, owned the whole of the 17.83 acres. His deed to Rosemary did not increase the size of her personal estate; it simply released to her his contingent right of survivorship, which is not and never was in her estate. See *Sanford v. Bertrau,* 204 Mich 244, 247 (1918):

> "* * * but a tenant by the entireties cannot during coverture, by deed, mortgage, devise, or other act of his own, defeat the right of the surviving husband or wife to hold the entire estate. * * * (Emphasis supplied)
>
> Page 252: "The reason that it [an entireties estate] cannot be sold in satisfaction of a judgment rendered against either of the tenants alone is apparent from the inherent nature of the estate. Neither owns any severable interest therein." (Emphasis supplied).

Because Alexander died before Rosemary, his former interest is no longer in existence, and, is worthless. As between Rosemary and Alexander, the October 30, 1991, deed signed only by Alexander, effected a quit claim of interest and termination of the entireties estate. But, up to that time, the whole of the 17.83 acres was in Rosemary's bankruptcy estate for eight months because neither spouse could, by his or her action, separate or remove any interests in the entireties estate, and, the Bankruptcy Court had not ruled on the claimed exemptions.

From and after Rosemary's filing date, the couple's interests could thereafter be separated either in the manner provided in the bankruptcy code. Sec 363(h) - 363(j), inclusive, or, in the manner provided by Michigan law, where sale, partial sale, or division of entireties property is necessary to satisfy allowed joint claims and liens. Rosemary's right of survivorship and her right to receive Alexander's interest by deed were certainly in her estate as of March 1, 1991. Where else could Alexander's interest have been? How could Congress unilaterally separate the entireties interests upon the filing of one spouse in the Bankruptcy Court, without violating the 5th Amendment?

**III. Under Michigan and federal law, no judge had subject matter jurisdiction on 10-16-91 to separate, divide, or apportion any part of the 17.83 acre parcel of real estate among the spouses, or to anyone else, because the tenancy had not been terminated.** In *Battjes Fuel and Building Material Co v. Milanowski,* 236 Mich 622, 624 (1926), the Court stated:

> "This statute recognizes a nonseverable interest of husband and wife in such a contract with full rights to the survivor. **This negatives any right of the husband to a determinable moiety under judicial**

> **holding, so long as the contract stands unimpeached for fraud. The husband could not, in any proceeding known to the law, have judgment determining and separating his interest, and what he cannot have, his creditor, in his place, cannot secure.** (Emphasis supplied). See also *Muskegon Lumber and Fuel v. Johnson,* 338 Mich 655, 658 (1954).

In *Papp v. Brownlee,* 361 Mich 501,502 (1960), the Court reaffirmed *Battjes Fuel,* supra.

Various judicial divisions can be made after an entireties estate is terminated, but no separation or division of the entireties property can be judicially decreed by any Court during the life of the tenancy, even if both spouses are before the Court. On October 16, 1991, Rosemary and Alexander's entireties estate had not been terminated. Lawyers Title and/or its insureds had no lien against the property or the entireties tenancy. No judge, in a suit begun on 10-16-91, had subject matter jurisdiction to impose a constructive trust over Alexander's "interest" then, or upon termination of the tenancy after October 16, 1991.

In *United States v Craft,* supra, at pp 1425, 1426 of 122 S. Ct., this Court stated:

> "We therefore conclude that respondent's husband's-interest in the entireties property constituted "property" or "rights to property" for the purposes of the federal tax lien statute. **We recognize that Michigan makes a different eholce with respect to state law creditors: "[L]and held by husband and wife as tenants by entirety is not subject to levy under execution on judgment rendered against either husband or wife** alone." *Sanford v. Bertrau,* 204 Mich 244, 247, 169 NW 880, 881 (1918). But

that by no means dictates our choice. The interpretation of 26 USC § 6321 is a federal question, and in answering that question we are in no way bound by state courts' answers to similar questions involving state law." (Emphasis supplied).

The right of survivorship of each individual spouse is indestructible under Michigan law, during the tenancy. Similarly, each spouse holds the sole indestructible right during the tenancy to deed to or to receive conveyance from the other spouse of their respective interests in the land owned by them by the entireties. MCL 557.101. reads:

**557.101. Tenancy by entirety; termination**

"Sec 1. In all cases where husband and wife own any interest in land as tenants by the entirety, such tenancy by the entirety may be terminated by a conveyance from either one to the other of his or her interest in the land so held."

In *Hearns v. Hearns,* 333 Mich 423,432 & 433 (1952), the Court stated:

"As noted, the property was owned by plaintiff and defendant as tenants by the entireties. That the husband might have released his interest to the wife, **thereby vesting her with full and complete title, is** not open to question. See *Ash v. Ash* 280 Mich 198 (1937)." (Emphasis supplied).

The simple point is that no judge, beginning with the Michigan Circuit Judge, where the suit against Alexander (but not against Rosemary) was filed in state court on October 16, 1991, had any jurisdiction to in any way separate or divide the entireties property or to determine Alexander's interest in the property or in the entireties estate during the tenancy, and, most certainly, not without Rosemary as a party. If the

husband cannot obtain "a determinable moiety in a court proceeding," neither can his wife or his creditor.

Entireties tenants have, under Michigan law, the unrestricted right to assign their interests in property held by the entireties, or any part thereof, to his/her spouse with or without consideration. *Johnson v. Fankell,* 117 S. Ct. 1800 (1997), in syllabus 5, states:

> "Neither United States Supreme Court nor any other federal tribunal has any authority to place construction on state statute different from the one rendered by state's highest court, whether state rule is procedural or substantive."

See also *New York v. Ferber,* 102 S. Ct. 3348, 3359-3360 (1982); *Exxon v. Wisconsin Department of Revenue,* 100 S. Ct. 2109, 2121 (1980). The validity of the October 30, 1991, deed from Alexander to Rosemary is not questioned. That deed is **not even mentioned** in the two comp'aints filed in the *Blachy* suit.

Petitioner has suggested that Lawyers Title's theory is subject to this "Catch 22:"

> "If a conveyance to a spouse of one's interest in property held by the entireties is valid, the grantor spouse, and anyone claiming through the grantor, no longer has any interest or contingent interest whatever in the interest conveyed; if the conveyance is invalid, the entireties estate is not terminated, and no creditor of either spouse can obtain a separation of the estate."

This Court, in *United States v Craft,* likewise did not question the validity of the couple's deed to Mrs. Craft. It held that the IRS lien attached to the husband's interest before it was deeded to Mrs. Craft and was not necessarily exempt as to the delinquent federal taxes. Pages 1425, 1426. But,

private creditors of the non-debtor spouse do not possess or enjoy a lien-like attachment to the interest of either entireties spouse.

On October 16, 1991, no judge had subject matter jurisdiction to invade the entireties tenancy. The 6th Circuit panel in *Blachy* did not address this issue directly. It was, said the panel, pp 907-908, the passage of 180 days after the March 1st filing date that forever prevented the merger of the two interests, even when Rosemary owned both interests.

Petitioner has cited Sec 541 (a)(7) to respondents and the lower courts. It reads:

> **"Sec. 541. Property of the estate**
>
> (a) The commencement of a case under section 301,302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
>
> (7) Any interest in property that the estate acquires after the commencement of the case."

Nobody has responded to Petitioner's argument that, if Rosemary's interest, including her right to receive a deed from Alexander, went into her estate on March lst, why didn't the benefit of Alexander's quit claim deed also go into the estate for the benefit of joint creditors (with surplus to Rosemary)? The 180 day provision applies only to items specified in Sec 541 (a)(5).

**IV. None of the lower courts had personal jurisdiction over the *Blachy v. Butcher* suit because Alexander and Rosemary were not ever both personally before a judge which had jurisdiction over both of them and the 17.83 acres.** Beginning on October 16, 1991, the date Lawyers Title instituted suit in a Michigan Circuit Court against

Alexander, but not against Rosemary, there was never a time when both spouses and the 17.83 acres were subject to the same suit and the same judge. No court ever had subject matter jurisdiction to divide the ownership of the 17.83 acres or to declare the share of the property to which either or both spouses might legally be entitled.

*In Sanford v. Bertrau,* 204 Mich 244 (1918), it is stated:

> "Page 247:
>
> The subject of estates by the entirety has been considered in many aspects by this Court.
>
> * * *
>
> In speaking of the estate this court said it was an entirety.
>
> They both took the same estate, the same interest, and it could not be separated. The right of the one was the right of the other. Neither could by a **separate transfer** affect the rights of the other, or his own. What would defeat the interest of one would also defeat that of the other. (Emphasis supplied).
>
> Page 250:
>
> Upon this legal fiction of the unity of husband and wife rests all of the distinctions and peculiarities which distinguish the estate by entireties from the other joint estates. * * *
>
> By reason of the common law fiction heretofore mentioned, the husband and wife, being one person in law, **were each incapable of holding any separate interest** in an estate so acquired. *** (Emphasis supplied). See also page 15 Ante.

In *Dickey v Converse,* 117 Mich 449, 455 (1898), the Court stated:

> This species of tenancy grows out of the unity of husband and wife, and is unlike that of joint tenants, who are each seized of an undivided moiety. The husband and wife **are each seized of the whole,** and not of undivided moieties." (Emphasis supplied).

If Rosemary owned the whole of the property on her petition date, then 28 USC Sec 1334(e), which provides that the Eastern District Court has exclusive jurisdiction **"of all of the property, wherever located, of the debtor as of the commencement of such case ..."** and Sec 541 (a), which covers "all legal or equitable interests of the debtor, etc," expressly includes the whole entireties property into her bankruptcy estate because she was and is "seized of the whole" entireties estate. *Dickey v Converse,* supra.

The *Blachy* suit was not binding on Rosemary, and the Bankruptcy Court proceedings were not binding on Alexander for lack of personal and/or subject matter jurisdiction.

**V. Quit-claiming a spouse's entireties interest to the debtor spouse cannot be fraudulent.** It has been Petitioner's position throughout that the October 30, 1991, quit-claim from Alexander to her of his interest in the 17.83 acres simply went into her estate and was exempt, except as to allowed claims of lien and joint creditors of the couple. This is the only effect contemplated by including entireties property into a debtor's estate. Sec 522(b)(2)(B). All lien and joint creditors would be paid in full, if possible, with the debtor (or the couple) taking any surplus, the same as if neither spouse had filed a Chapter 7 Petition.

There is not the concern here expressed by this Court in *United States v Craft* at p 1426 of 122 S Ct, as to whether the

interspousal conveyance could be fraudulent. No lien or joint creditor entitled to payment on the filing date could be deprived of any available sale proceeds because of the conveyance. Rather, these creditors could recover simply by filing a joint claim in the bankruptcy court against the whole property.

The lower courts put undue importance on the argument that the interest of the non-debtor spouse is technically not "in" the debtor spouse's bankruptcy estate under Sec 541. But, it is "in" Rosemary's estate because she unquestionably owned the entire property upon filing, as did the non-debtor spouse. *Sanford v. Bertrau,* 204 Mich 244, 247 (1918). There was no filing or pre-filing separation of the entireties estate. See *In Re Rerisi* (1994 NY) 172 BR 525, 30 CBC2d 1069.

> "spouse's death did not alter trustee's ownership right to properties, but, rather, merely eliminated any and all of spouse's ownership rights in those properties by operation of law."

In other words, Lawyers Title was given a deed to the "estate's interest" in undescribed property for which Lawyers Title paid $225,000.00, which amount was required by the sales advertisement to be paid to the United States to pay its tax liens; to the trustee and his attomey to pay costs of administration, and, a small percentage of the listed joint claims. (App K, 43a). The lower courts in *Blachy v. Butcher* specifically found the Government's claim of lien against Alexander's interest to be valid, and, then the trustee paid the liens out of Rosemary's estate funds. Judge Quist had no authority to declare or charge the bankruptcy estate for a judicial lien against Alexander's interest, which he created, because neither Rosemary nor the trustee was a party to that action. If Alexander's interest was not in Rosemary's estate,

the trustee could have no authority to pay the lien against that interest out of estate funds.

There can be no fraudulent conveyance when both spouses' interests are placed in the debtor's estate.

**VI. Rosemary is entitled to any surplus.** Today, the *Blachy* insured Plaintiffs claim constructive title to Alexander's equitable interest, and they claim to have purchased Rosemary's interest for $225,000.00, while admitting that the 17.83 acres are worth more than $5,000,000.00. There is a huge surplus under the Bankruptcy Code.

In *Muskegon Lumber and Fuel v. Johnson,* 338 Mich 655, 660 (1954), a mortgage on a house owned by a couple by the entireties was foreclosed. The mortgage was paid, and the surplus was paid into Court. A creditor of the husband sought to reach the surplus. The Court adopted this citation:

> "We know of no rule of law which would destroy an estate by entireties in a surplus arising from a foreclosure of a mortgage on an entirety estate. Both parties are now living and every unity of person, of time and estate which ever existed exists now.
>
> That the estate by entireties continues **in the surplus fund** arising from the sale has been determined by several cases. (Citations omitted) * * *
>
> The interest of a wife in an estate by entireties is her separate property which she may hold free of her husband's debts. One of the incidents of the estate is the power to sell it with her husband's consent. It is for this reason, the denial of her right of alienation, which makes invalid during their joint lives any deed or mortgage executed by the husband alone, and it is

for this reason that a judgment against the husband is ineffective. * * *

If, as we have held, the surplus of the proceeds of the foreclosure sale are to be considered in this case as the land itself, we see no reason why said fund is not to be governed or disposed of by the husband and wife, acting jointly, to the same degree or extent as they could have disposed of the real estate itself, just prior to the sale." (Emphasis supplied). *See also In Re: Trickett,* 14 BR 85, 91 (1981) WD of Michigan.

All of the monetary proceedings have supposedly been completed in the bankruptcy case. The proceedings before Judge Quist in *Blachy are* void for lack of subject matter and personal jurisdiction. All claims and administrative expenses have been paid or disallowed. The bankruptcy sale proceedings are void for lack of jurisdiction over the property. The Trustee has not performed his duties.

**VII. The Western District Judge had no jurisdiction to decide the issues relating to Petitioner's bankruptcy proceedings.** Western District Judge Quist made rulings that he had jurisdiction over *Blachy v. Butcher,* and he made many factual findings relative to the bankruptcy proceedings and property, which rulings and findings Plaintiffs and the lower courts claim are binding on Petitioner in this case. See *Blachy v Butcher* head notes, 221 F.3d, 896-900; the District Judge's comments (APP C, 24a); and, the Sixth Circuit Panel comments (App B, 2a). But, Judge Quist admittedly had no jurisdiction over Rosemary's bankruptcy case. He could not make any ruling which bound Rosemary or the Eastern District Bankruptcy Court.

The only issues presented to Western District Judge Quist in *Blachy,* supra, were whether a constructive trust could or should be imposed on Alexander's interest in the 17.83 acres,

and, whether Plaintiffs had priority over the US. Judge Shapero also lifted the automatic stay to permit Plaintiffs to claim the October 30, 1991, conveyance to Rosemary was fraudulent as to them, but Plaintiffs chose not to include such a count in their Amended Complaint.

Of course, the constructive trust issue was transferred to the Western District because Judge Shapero conceded that he had no power to impose a constructive trust. [App N, 52a]

*In Re: Omegas Group, Inc.*, 16 F.3d 1443 (1994) (6th Cir). Obviously, Rosemary and her interest in the 17.83 acres were necessary parties or things who or which were not joined in the Western District Court constructive trust action. The bankruptcy judge could not "share" his jurisdiction, pp. 908-09 of 221 F.3d. He transferred venue of the constructive trust count because he admittedly *had no jurisdiction*. See *Blachy*, page 902.

Judge Quist imposed a constructive trust over Alexander's interest. If he had ruled that Alexander had a fifty percent (50%) interest in the entireties property, then he would necessarily have ruled that Rosemary's bankruptcy estate interest does not exceed fifty percent (50%) and vice versa. If the Bankruptcy Judge rules that Alexander's Quit Claim Deed went entirely into Rosemary's bankruptcy estate, and has not yet come out, then Alexander had no interest in any of the property over which a constructive trust could be imposed by Judge Quist.

In *Papp v. Brownlee,* 361 Mich 501 (1960), the Court held that the lower Court had no jurisdiction to even adjudicate regarding entireties property interests held by the debtor and his wife, because the property was non-severable. "Finding of sole ownership of property in husband not binding on non-party wife." *Gorelick v. Shapero,* 222 Mich 381,384, 385 (1923).

**VIII. The sale of the estate's interest was not made in good faith.** The term "estate's interest" has not been defined in any of these proceedings. The "estate's interest," "Alexander's interest," and "Rosemary's interest" have never been identified, inventoried, or determined in these proceedings.

The property has not been appraised, except by reference to the property tax assessment rolls. [App P, 57a]. Rosemary's exemption claims have never been denied. No exemption objections have been upheld in the Bankruptcy Court.

Lawyers Title and the friendly trustee have invented a new sale procedure which will delight all bankruptcy case scavengers. The property comprising the "estate's interest" was offered for sale subject to continued possession and claim of title by the insured claimants and the promise of continued litigation. [App H, 34a]. If we assume the tax roll assessments to be reasonably accurate, the 24 units would have an average value of over $200,000.00. Why, then, was the "estate's interest" sold for $225,000.00?

The Sixth Circuit panel in *Blachy* sustained the Government's claim of a tax lien against the "non-bankruptcy" interest of Alexander, page 905 of 221 F.3d, and **then, the trustee paid the lien claim, against Alexander's interest, out of Rosemary's interest in her estate giving Lawyers Title a $5 million dollar parcel of property for $225,000.** To sell property to which claims in the amount of $225,000 certainly must be paid by the "seller," for $225,000, is to give the original property away.

**IX. The bankruptcy code permits a debtor to avoid the imposition of a post-petition constructive trust.** Coming full circle, Section 522(f) of the Code reads:

"(f) Notwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is -

(1) a judicial lien; or

(2) a nonpossessory, nonpurchase-monetary security interest ..."

*In Re Omegas Group, Inc.,* 16 F 3d 1443 (6th Cir. 1995, pp 145, 146) has not been reversed. It says the same thing as Section 522(f). The only reason for this eleven year exercise is that neither Lawyers Title, nor the insureds it represents, are joint creditors of Rosemary and Alexander [Sec 101 (36)(37)].

"Section 101. Definitions

In this title-

(36) "judicial lien" means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding;

(37) "lien" means charge against or interest in property to secure payment of a debt or performance of an obligation;

In FN9 of *Omegas,* page 1452, the Court declared: **"constructive trusts therefore have no place in bankruptcy."** (Emphasis supplied). Rosemary and Alexander acquired the 17.83 acres as tenants by the entireties in July of 1978. The Bankruptcy Code took effect on October 1, 1979. Legislation acts prospectively. In *United States v. Security Industrial Bank,* 103 S Ct 407, 408 (1982), this Court held:

> "No bankruptcy law shall be construed to eliminate property rights that existed before the law was enacted in the absence of an explicit command from Congress. In light of this principle, in the absence of a clear expression from Congress' intent to apply Section 522(f)(2) to property rights established before the enactment date, the statute will not be construed in a manner that could call upon this Court to resolve difficult and sensitive questions arising out of the guarantees of the Takings Clause."

In *Owen v. Owen,* supra, 111 S Ct, pp 1837, 1836, this Court held that a post-petition judicial lien, such as the constructive trust imposed by Judge Quist, could be avoided by debtor under this section. The obvious purpose is to permit administration and distribution of debtors' estates to be governed by the code provisions, not by state laws. This Court said in *Owen* at p 1831:

> "We hold that Sec 522(f)(1) of the Bankruptcy Code requires a debtor to have possessed an interest to which a lien attached, before it attached, to avoid the fixing of the lien on that interest."

Rosemary acquired her interest in the 17.83 acres in 1978, 20 years before the *Blachy* imposition of a constructive trust by Judge Quist, and received the deed from Alexander 7 years before the *Blachy* Judgment. The entireties property, except for allowed lien and joint creditor claims was exempt from post-petition judicial liens.

While the present code includes entireties interests into bankruptcy estates, there is no provision in the code authorizing a different judge to rule on post-petition constructive trust claims or suits. The *Blachy* Plaintiffs are unable to cite any constructive trusts imposed in Michigan

over entireties interests acquired with the couple's own money, or, for only one spouse's debts.

Between them, Alexander and Rosemary were certainly entitled, on the filing date, to declare their entireties interest to be exempt, except as to allowed joint claims and liens.

## CONCLUSION

Under both MCL 557.101 and Michigan's common law, one spouse could convey his/her interest in property owned by the couple by the entireties to the other spouse. Lawyers Title's argument, and the lower court's holdings, to the effect that the grantor spouse's creditors can thereupon follow and recover their claims against the grantor out of the interest received by the grantee spouse, is absurd on its face. Under that reasoning, creditors can recover out of the entireties property whether their debtor is the grantor or the grantee.

Lawyers Title seems unable to understand the force of Petitioner's simple "Catch-22" analogy. If Alexander's interest vested completely in Rosemary on October 30, 1991, then the entireties estate terminated and he no longer had any "interest" over which a constructive trust could be imposed after the termination. If the conveyance carried the baggage of the claims of Alexander's creditors, then his interest did not all go to Rosemary, and the entireties estate would not then terminate. If this was such a conveyance, the tenancy would have terminated upon Alexander's death on December 26, 1991, and Alexander's whole interest would have then vested in Rosemary. But, if the non-debtor spouse's interest goes into the debtor's bankruptcy estate, it can only come out after all allowed lien and joint creditor claims have been paid.

Nobody could give testimony as to what actually happened. Alexander died; Rosemary was not a participant in

these events; Lawyers Title's agent has no specific recollection regarding events of 25 years ago.

Suffice it to say that many mistakes or lapses occurred. Lawyers Title should not be able to escape its contractual obligations arising out of its failures to examine the public record by making false factual claims to the Courts. The decades-old laws of Michigan should not be altered just because this company was so negligent.

Lawyers Title's entire argument depends upon the validity of the Sixth Circuit Panel's holding, pages 907, 908 of 221 F.3d, that only Rosemary's interest in the 17.83 acres went into her bankruptcy estate, because, said the Panel, the deed was given more than 180 days after her filing. Page 908. But, if both spouses' interests go into the Filer's Estate, the 180 day provision in 11 U.S.C. §541(a)(5) can have no possible application to property held by the entireties. The Fifth Amendment requires notice and an opportunity for hearing before the congress could legislate a separation of entireties interests, where only one spouse files a bankruptcy petition

For the reasons set forth above, the Petition for a Writ of Certiorari should be granted.

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## APPENDIX A

## UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

**Nos. 02-1343/1344**

**[Filed April 16, 2003]**

IN RE: ROSEMARY BUTCHER,
Debtor.

ROSEMARY BUTCHER,
Appellant,

v.

UNITED STATES OF AMERICA, ET AL.,
Appellees.

## ORDER

**BEFORE:** MARTIN, Chief Judge; MERRITT and LAY*, Circuit Judges.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the

* Hon. Donald P. Lay, Senior United States Circuit Judge for the Eighth Circuit Court of Appeals, sitting by designation.

original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the cases. Accordingly, the petition is denied.

**ENTERED BY ORDER OF THE COURT**

/s/_____
Leonard Green, Clerk

## APPENDIX B

## UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

**[Filed February 18, 2003]**

| | |
|---|---|
| IN RE: ROSEMARY BUTCHER, Debtor. | ) |
| ROSEMARY BUTCHER, Appellant, | ) |
| v. | ) |
| UNITED STATES OF AMERICA; LAWYERS TITLE INSURANCE CORPORATION; FRED J. DERY, Appellees. | ) |

Before: MARTIN, Chief Circuit Judge; MERRITT and LAY, Circuit Judges.*

The facts of this Chapter 7 bankruptcy are found in this court's prior opinion in *Blachy v. Butcher,* 221 F.3d 896 (6th

* The Honorable Donald P. Lay, Circuit Judge of the United States Court of Appeals for the Eighth Circuit, sitting by designation

Cir. 2000), *cert. denied*, 532 U.S. 994 (2001). The debtor appeals here the district court's judgment that affirms several orders of the bankruptcy court, including an order granting a motion to transfer liens and the proceeds of sale and an order confirming a sale. The debtor has filed a "Motion for Summary Judgment of Reversal or, in the alternative, a Declaration that the Constructive Trust Order Granted by this Court in *Blachy v. Butcher* Be Declared Void Fr Civ P 60(b)(4)." Lawyers Title Insurance Corporation, an appellee, moves to dismiss this appeal on grounds of mootness.

The district court issued its opinion and order on February 12, 2002. After the issuance of that opinion, the Chapter 7 trustee in bankruptcy issued a trustee's deed to Lawyers Title for the bankruptcy estate's interest. Further, after that sale and transfer, the trustee paid the amount of a tax lien, and the government released the notice of lis pendens that had been recorded on the property. The debtor did not move to stay these actions.

As recognized in *In re 255 Park Plaza Associates Ltd. Partnership,* 100 F.3d 1214, 1217 (6th Cir. 1996), the bankruptcy mootness rule is codified at 11 U.S.C. § 363(m), which provides:

> The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or lease such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

The fact that the buyer is a party to the appeal does not negate

the exception. *In re 255 Park Plaza Associates,* 100 F.3d at 1217.

The motion to dismiss this appeal hereby is **GRANTED,** The debtor's motion is dismissed as moot.

ENTERED BY ORDER OF THE COURT

/s/_____
Clerk

## APPENDIX C

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF MICHIGAN**
**SOUTHERN DIVISION**

**CASE NOS. 01-73720, 01-73721, & 01-73724**

**[Filed February 12, 2002]**

| | |
|---|---|
| IN RE: | ) |
| | ) |
| ROSEMARY C. BUTCHER, | ) |
| | ) |
| Debtor. | ) |
| | ) |

HON. LAWRENCE P. ZATKOFF

**OPINION AND ORDER**

AT A SESSION of said Court, held in the United States Courthouse, in the City of Detroit, State of Michigan, on 12 Feb 2002

PRESENT: THE HONORABLE
LAWRENCE P. ZATKOFF
CHIEF UNITED STATES DISTRICT JUDGE

## I. INTRODUCTION

This matter is before the Court on Debtor's appeals from three Bankruptcy Court orders: 1) Order Granting Motion to Transfer Liens and Interests to Proceeds of Sale [Case No. 01-737201; 2) Order Denying Debtor's Motion for Partition and Owelty, and/or For Sale of Her Estate's NonExempt Property [Case No. 01-73721]; and 3) Order Confirming Sale [Case No. 01-73724]. Debtor filed a brief for each appeal; Trustee filed a responsive brief on appeal. The Court finds that the parties have adequately set forth the relevant law and facts, and that oral argument would not aid in the disposition of the instant appeals. *See* E.D. MICH. L.R. 7.1(e)(2). Accordingly, the Court ORDERS that the appeals be decided on the briefs submitted. For the reasons stated below, the Bankruptcy Court's: 1) Order Granting Motion to Transfer Liens and Interests to Proceeds of Sale [Case No. 01-73720] is AFFIRMED; 2) Order Denying Debtor's Motion for Partition and Owelty, and/or For Sale of Her Estate's Non-Exempt Property [Case No. 01-73721] is AFFIRMED; and 3) Order Confirming Sale [Case No. 01-73724] is AFFIRMED.

## II. BACKGROUND

Debtor Rosemary Butcher first filed for Chapter 7 bankruptcy on March 1, 1991; thus, this case has a long and detailed background. The Sixth Circuit's opinion in *Blachy v. Butcher,* 221 F.3d 896 (6th Cir. 2000), provides a detailed overview of the complex facts and procedural history surrounding the case. The Court's recitation of the facts are relevant only to the issues before the Court.

### A. History

Debtor was married to Alexander Butcher. On June 30,

1978, a partnership named Cedar Cove, of which Alexander was a partner, conveyed a deed to real property, including the 17.83 acres at issue, to the Butchers. On July 6, 1978, the Butchers deeded the real property to the Little Traverse Development Corporation ("LTDC"). Alexander Butcher was the sole shareholder, President, Resident Agent, and a director of LTDC. Debtor was the Secretary of LTDC. On July 12, 1978, the Butchers recorded their deed from Cedar Cove. Five minutes later, LTDC recorded its deed for the property from the Butchers. LTDC also recorded a mortgage on the property as well as a construction loan issued to LTDC. On the same day, LTDC executed a warranty deed to the Butchers conveying a portion of the property– the 17.83 acres at issue – back to the Butchers for $1.00, which the Butchers recorded on July 14, 1978.

At Alexander's request, on July 18, 1978 Lawyers Title Insurance Corporation (hereinafter "Lawyers Title") issued a title commitment to LTDC for a large portion of LTDC's land, including the 17.83 acres that LTDC no longer owned. Lawyers Title never discovered, and Alexander never informed Lawyers Title, that LTDC did not own the 17.83 acres that was conveyed to the Butchers. Instead, both before and after the 17.83 acres were conveyed back to the Butchers for $1.00, LTDC and, at times, the Butchers represented that LTDC was the owner and title holder of the entire property, including the 17.83 acres. In fact, the only times the Butchers represented that they owned the 17.83 acres were on July 14, 1978, when the deed was recorded, and when Debtor claimed an interest in the 17.83 acres during these bankruptcy proceedings. The Butchers never paid real estate taxes on the 17.83 acres; instead, the 17.83 acres were listed in the name of either LTDC or Harbor Cove Development Company (hereinafter "HCDC"), which was another corporation owned by the Butchers. Between 1981 and 1984, LTDC sold

condominium units on the 17.83 acres to many third parties. On each sale, LTDC acted as the grantor of the warranty deeds on the 17.83 acres. LTDC also represented that it held legal title to the 17.83 acres when selling a portion of the 17.83 acres to HCDC in October 1984. Between 1985 and 1987, HCDC conveyed condominium units to several third parties, again by warranty deed.

As mentioned earlier, Debtor filed her bankruptcy petition on March 1, 1991. Thereafter, Lawyers Title discovered the fact that the subject 17.83 acres had been conveyed back to the Butchers as tenants by the entirety. On October 16, 1991, Lawyers Title filed an action in the Emmet County Circuit Court against Alexander Butcher and his corporations to obtain title and impose a constructive trust on his interest in the 17.83 acres. On October 30, 1991, Alexander conveyed his interest in the 17.83 acres to Debtor via quit claim deed. This interest in the 17.83 acres did not become part of Debtor's bankruptcy estate because she acquired it after she filed for bankruptcy. *See* 11 U.S.C. § 541(a)(1) (stating that a bankruptcy estate consists of "all legal and equitable interests of the debtor in property as of the commencement of the case."). Alexander died on December 26, 1991.

In November 1994, the Bankruptcy Court imposed a constructive trust on the 17.83 acres, thereby transferring the rights in the 17.83 acres from the legal title holder, Debtor, to the equitable title holder, Lawyers Title and its insureds. Debtor appealed that ruling to this Court, which reversed relying on *In Re Omegas Groups, Inc.*, 16 F.3d 1443 (6th Cir. 1994). This Court held that "[c]onstructive trusts are anathema to the equities of bankruptcy since they take from the estate, and thus directly from competing creditors, not from the offending debtor." *See Butcher v. Blachy,* Nos. 95-70325, 95-70349,1995 WL 578193, *2 (E.D. Mich. July31,

1995) (citing *In Re Omegas Groups, Inc.*, 16 F.3d at 1452).

On remand, the Bankruptcy Court transferred the constructive trust claim to the Western District of Michigan. While there, the United States District Court imposed a constructive trust over the non-bankruptcy portion of Debtor's interest in the 17.83 acres, which was the interest acquired from Alexander. The Sixth Circuit affirmed that portion of the District Court's decision.[1] The United States Supreme Court denied Rosemary's petition for a writ of certiorari.

**B. Present Proceedings**

After the Supreme Court denied the petition for the writ of certiorari, the Bankruptcy Court for the Eastern District of Michigan continued with the main portion of Debtor's bankruptcy. The estate itself includes an undivided interest in the 17.83 acres at issue. The bankruptcy trustee (hereinafter "Trustee") made a motion to sell the estate's interest in the 17.83 acres, and transfer liens, interests, and claims to the proceeds of the sale. Trustee indicated in the motion that the IRS had a lien upon the property worth $179,000, and that Trustee received an offer from Lawyers Title to purchase the estate's interest in the 17.83 acres for $200,000. The offer was for the property to be sold free and clear of all liens, claims, encumbrances, and interests of Debtor, Alexander Butcher, the Estate of Alexander Butcher in probate, and the bankruptcy estate of Debtor, with all such liens, claims, encumbrances, or interests to attach to the proceeds of the sale. No liens, mortgages, or encumbrances on individual

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[1] In addition, the Sixth Circuit reversed the Western District of Michigan's holding that the constructive trust defeated the IRS's tax lien. *See Blachy v. Butcher,* 221 F.3d at 906.

condominiums or their owners were to be affected by the sale. The motion also noted the time, date, and location of the sale, as well as the fact that competing bids would be accepted. Debtor responded by opposing Trustee's motion, and filed her own motion for partition and owelty, and/or for sale of her estate's non-exempt property. Lawyers Title responded to Debtor's motion.

The Bankruptcy Court held a hearing on these motions. At the hearing, Trustee argued that the offer to buy the land for only $225,000[2] was reasonable because of the likelihood of future litigation over the property. The Bankruptcy Court granted Trustee's motion to sell the estate's interest in the 17.83 acres to Lawyers Title for $225,000, and also entered an order granting Trustee's motion to transfer liens and interests to the proceeds of the sale. Finally, the Bankruptcy Court denied Debtor's motion for partition because it was rendered moot by granting Trustee's motion. Debtor appeals those three orders of the Bankruptcy Court; each appeal was assigned a separate case number: 1) Order Granting Motion to Transfer Liens and Interests to Proceeds of Sale [Case No. 0173720]; 2) Order Denying Debtor' s Motion for Partition and Owelty, and/or For sale of Her Estate's Non-Exempt Property [Case No. 01-73721]; and 3) Order Confirming Sale [Case No. 01-73724].

## III. STANDARD OF REVIEW

The Court's jurisdiction to review orders of the Bankruptcy Court is governed by 28 U.S.C. § 158:

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[2] For reasons unknown to the Court, the proposed sale price increased by $25,000.

(a) The district court of the United States shall have jurisdiction to hear appeals [--]
(1) from final judgments, orders, and decrees;
(2) from interlocutory orders and decrees issued under section 112 l(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title; and
(3) with leave of the court from other interlocutory orders and decrees; of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

28 U.S.C. § 158(a)(1)-(3). Section 158(a) gives this Court jurisdiction to hear appeals from final orders of the Bankruptcy Court for the Eastern District of Michigan. A final order is one that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. *See Catlin v. United States,* 324 U.S. 229 (1945).

The standard of appellate review is clear error with respect to findings of fact and de novo with respect to conclusions of law. *See* FED. R. BANKR. P. 8013; *In re The Gibson Group, Inc.,* 66 F.3d 1436, 1440 (6th Cir. 1995); *Harbour Lights Marina, Inc. v. Wandstrat,* 153 B.R. 781 781 (S.D. Ohio 1993) ("When reviewing a bankruptcy court's decision, a district court functions as an appellate court, and applies the standard of review generally applied in the federal courts of appeals."). In the present set of appeals, Debtor raises questions of fact and questions of law. Each argument, therefore; will be reviewed according to whether they raise questions of fact or questions of law.

## IV. ANALYSIS

As mentioned above, Debtor objects to the Bankruptcy Court's orders: 1) granting Trustee's motion to transfer liens and interests to the proceeds of the sale [Case No. 01-73720]; 2) denying Debtor's motion for partition and owelty, and/or for sale of her estate's non-exempt property [Case No. 01-73721]; and 3) confirming sale [Case No. 01-73724]. Though many of Debtor's arguments are common to each of her three appeals, the Court will discuss each appealed order separately, starting with the most central order: the order confirming sale [Case No. 01-73724].

### A. Order Confirming Sale [Case No. 01-73724]

Debtor makes three arguments attacking the order confirming sale. First, Debtor argues that under the bankruptcy code, the bankruptcy estate consists of all the property mentioned in 11 U.S.C. § 541(a), reduced by any applicable exemptions in 11 U.S.C. § 522(b). While Debtor admits that Trustee may sell the non-exempt assets of the estate under 11 U.S.C. § 363, the Bankruptcy Court must first identify and partition the exempt interests in the property from the non-exempt interests. In addition, Debtor argues that the bankruptcy estate has no interest in the 17.83 acres to sell. This argument calls for a review of the finding of facts under the clearly erroneous standard.

It is clear that the estate has an interest in the 17.83 acres. As mentioned in the Background section of the opinion, Debtor's bankruptcy estate was established when she filed for bankruptcy on March 1, 1991. *See* 11 U.S.C. § 541 (a)(1). Debtor owned an interest in the 17.83 acres at that time, therefore her interest in the 17.83 acres became part of her bankruptcy estate. That has been confirmed by both the

Western District, *see generally Blachy v. Butcher,* 35 F. Supp. 2d 554 (W.D. Mich., 1998), and the Sixth Circuit, *see generally Blachy v. Butcher,* 221 F.3d 896 (6th Cir. 2000). That determination is final, and cannot be relitigated here. Because the estate owns an interest in the 17.83 acres, Trustee may sell that interest. *See* 11 U.S.C. § 363(b) ("The trustee . . . may use, sell, or lease. . . property of the estate.").

As for Debtor's exemptions, Debtor simply made an unsupported assertion that the land is exempt. Upon reviewing 11 U.S.C. § 522(d), as well as applicable Michigan laws, the Court concludes that there is only one exemption that may apply here: under Michigan law, "ordinary creditors cannot reach interests in entireties property, and the entire interest will therefore be exempt if there are no joint creditors." *Liberty State Bank & Trust v. Grosslight (In re Grosslight),* 757 F.2d 773,776 (6th Cir. 1985). "Joint creditors, however, can reach entireties interests . . ." *Id.* Debtor does not, however, point the Court to any facts that lead the Court to believe that this exemption applies, or that the Bankruptcy Court erred. Therefore, the Court has no reason to vacate the order of the Bankruptcy Court confirming sale on these grounds.

The Debtor's second argument is no more successful. Debtor essentially argues that Trustee did not sell the land in good faith because the price yielded was too low. Relying upon an assessor's appraisal of the 17.83 acres, Debtor argues that the land is worth over $5,000,000, and that Trustee at least should have been able to sell the land for roughly $2,500,000, which represents Debtor's interest in the tenancy by the entirety. This, however, is the only support Debtor gives for her assertion, and makes no other representation to the Court that would lead the Court to believe that the sale was not made in good faith. Debtor does not, for instance,

represent to this Court that Trustee was derelict in his duty to advertise the land or to entertain any superior offers. Instead, the Bankruptcy Court found the sale of the estate's interest in the 17.83 acres for $225,000 to be reasonable. While that amount may sound low in comparison to the appraised value, that does not, by itself, mean that the sale was not conducted in good faith. Indeed, $225,000 may well be reasonable based upon the fact that the 17.83 acres has been subject to extensive litigation thus far, and will likely be subject to further litigation. Because this is a clear question of fact, the Court can only reverse the Bankruptcy Court's order if it is clearly erroneous, which it is not. Therefore, this argument fails.

Defendant's third argument, based upon the Fifth Amendment, also fails. Debtor argues that the Bankruptcy Code, as applied in this case, is unconstitutional because it violates the Fifth Amendment's Takings Clause. Relying upon the Supreme Court's reasoning in *United States v. Security Industrial Bank,* 459 U.S. 70 (1982), Debtor argues that bankruptcy law cannot be construed to eliminate property fights that existed before the law was enacted. *See id.* at 81. Debtor owned the 17.83 acres as a tenant by the entirety with her husband, and therefore each had a right to survivorship. *See Rogers v. Rogers,* 356 N.W.2d 288, 293 (Mich. Ct. App. 1984). If her interest in the land would have become part of the estate, then it would have effectively denied Alexander's right of survivorship, and thus denied him a property right. Therefore, Rosemary's interest in the property could not have become part of the bankruptcy estate without denying Alexander his Fifth Amendment rights. This is a question of law, and is reviewed *de novo*.

Upon review, this argument fails because Alexander was not deprived of a property right. Under § 541, "all legal or

equitable interests of the debtor in property as of the commencement of the case," including Debtor's interests in entireties property, becomes part of the debtor's bankruptcy estate. 11 U.S.C. § 541(a)(1); *see In re Arango*, 992 F.2d 611, 614 (6th Cir. 1993); *see also In re Smith*, 246 B.R. 540 (Bkrtcy. E.D. Mich., 2000) (citing *In re Grosslight*, 757 F.2d at 775; *Michigan National Bank v. Chrystler (In re Trickett)*, 14 B.R. 85, 88-89 (Bankr. W.D. Mich. 1981)). Interests in entireties property, however, are exempted out of the bankruptcy estate to the extent that the debtor's interest is not subject to execution under state law. *See* 11 U.S.C.§ 522(b)(2)(B); *see also In re Arango*, 992 F.2d at 614. In other words, the operation of the Bankruptcy Code could not deny Alexander of a property fight that existed under state entireties law because the Bankruptcy Code incorporates state entireties law.

The Court cannot reverse the Bankruptcy Court's order confirming sale on any of the three arguments presented. Therefore, the Bankruptcy Court's order confirming sale is AFFIRMED.

The next logical step is to decide whether the Bankruptcy Court erred in ordering the transfer of liens to the proceeds of the sale of the 17.83 acres.

**B. Order Transferring Liens to the Proceeds of the Sale (Case No. 01-73720).**

From her brief, it appears Debtor does not object to the transferring of liens so much as the order confirming the sale of the property. Much of her argument in this appeal mirrors her argument in her appeal from the Bankruptcy Court's order confirming sale. In fact, in her brief in this appeal, she writes, "Debtor, of course, does not object to a sale of non-exempt

estate property and the transfer of liens and interest to the proceeds of sale, but, as noted in Appeal Number 01-73724, no property of the estate is being sold." This is nearly identical to her first argument in her appeal from the Bankruptcy Court's order confirming sale, in which she conceded that Trustee can sell nonexempt assets, but that there were no non-exempt assets to be sold. The Court answers this argument as it did above: it has been determined that the estate does have an interest in the property. Further, Debtor has provided the Court with no reason to reverse the Bankruptcy Court's determination that the property should be sold.

The only other argument that is raised in this appeal is confusing. Debtor argues that the Bankruptcy Court lacked the authority to order the tax lien of the United States to be paid from the proceeds of the sale of the estate's interest in the 17.83 acres.[3] The Court cannot understand why the Bankruptcy Court would not have this authority. A trustee is the representative of the estate, *see* 11 U.S.C. § 323, and, under Chapter 7, has a duty to pay the various creditors of the debtor. *See* 11 U.S.C. § 704. Because the United States has a tax lien, the trustee has a duty to pay the United States. *See* 11 U.S.C. § 724. Debtor herself recognizes this, as she writes in her brief: "Each [unsecured creditor] is entitled to a pro-rata share of the $225,000 sale price left after paying the United States and the administrative expenses." Therefore, the Court cannot reverse the Bankruptcy Court's order transferring liens to the proceeds from the sale of property based upon any of the arguments presented. The order of the Bankruptcy Court transferring liens to the proceeds of sale is

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[3] In making this argument, Debtor concedes that the bankruptcy estate does have an interest in the 17.83 acres.

**AFFIRMED.**

The Bankruptcy Court held that these determinations mooted Debtor's motion for partition and owelty, and/or for sale of her estate's non-exempt property. The Court now turns to the merits of Debtor's appeal.

**C. Order denying Motion for Partition and Owelty, and/or For Sale of Her Estate's Non-Exempt Property (Case No. 01-73721).**

Debtor presents the Court with three arguments for why the Bankruptcy Court was in error for not ordering a partition of the 17.83 acres. Two of them, however, were also included in Debtor' s appeal from the order confirming sale, and have already been rejected by the Court: Trustee did not conduct the sale in good faith, and the Bankruptcy Code is unconstitutional as applied. The Court rejects Debtor's second and third arguments for the same reasons as mentioned above. Debtor's first argument on this appeal has yet to be evaluated by this Court.

Debtor argues that the 17.83 acres ought to be partitioned because Lawyers Title's interest in the 17.83 acres comes largely from the constructive trust imposed upon Alexander's interest in the property. But, Debtor took Alexander's interest in the 17.83 acres when he deeded his share of the property to her on October 31, 1991. Further, due to the fact that Alexander and Debtor owned the 17.83 acres as tenants by the entirety, Debtor took whatever interest Alexander still had in the 17.83 acres when he passed away on December 26, 1991, thereby destroying any interest in a constructive trust that Lawyer' s Title may have had. *See Rogers,* 356 N.W.2d at 293. ("One incident of an estate by the entireties is that the survivor, whether husband or wife, is entitled to the whole

and such right cannot be defeated by a conveyance by one spouse to a stranger."). Debtor concludes that if Lawyers Title had any interest remaining, the Bankruptcy Court should have partitioned the estate.

The fate of the interest in the 17.83 acres that Debtor received from her late husband was decided already, and cannot be relitigated here. As mentioned above, while it is true that a constructive trust cannot be imposed upon Debtor's interest in the property that became part of the bankruptcy estate, *see Butcher v. Blachy,* Nos. 95-70325, 95-70349, 1995 WL 578193, *2 (E.D. Mich. July 31, 1995) (citing *In Re Omegas Groups, Inc.,* 16 F.3d at 1452), the constructive trust imposed by the United States District Court for the Western District of Michigan applied only to Debtor's non-bankruptcy interest in the property, which is the share she received from Alexander. Furthermore, Debtor's arguments were discussed and discarded on the merits by the Western District's opinion. *See Blachy v. Butcher,* 35 F. Supp. 2d 554, 559-60 (W.D. Mich. 1998).

In addition to the fact that the issue Debtor raises has already been decided, Debtor's argument is altogether irrelevant for present purposes. The issue in the present appeal is whether the Bankruptcy Court was in error for ordering the sale of the interest in the land that is in Debtor's bankruptcy estate, and in error for denying Debtor's motion for a partition. Whatever happened to the non-bankruptcy portion of the estate is irrelevant in determinating the proper disposition of the assets within the bankruptcy estate.

## V. CONCLUSION

For the reasons mentioned above, the Bankruptcy Court's: 1) Order Granting Motion to Transfer Liens and Interests to

Proceeds of Sale [Case No. 01-73720] is AFFIRMED; 2) Order Denying Debtor's Motion for Partition and Owelty, and/or For sale of Her Estate's Non-Exempt Property [Case No. 01-73721] is AFFIRMED; and 3) Order Confirming Sale [Case No. 01-73724] is AFFIRMED.

**IT IS SO ORDERED.**

Dated 12 Feb 2002

/s/_____
Lawrence P. Zatkoff
Chief United States District Judge

## APPENDIX D

## UNITED STATES DISTRICT COURT
## EASTERN DISTRICT OF MICHIGAN
## SOUTHERN DIVISION

**CASE NOS. 01-73720, 01-73721, & 01-73724**

**[Filed February 12, 2002]**

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|---|---|
| IN RE: | ) |
| | ) |
| ROSEMARY C. BUTCHER, | ) |
| | ) |
| Debtor. | ) |
| | ) |

**JUDGMENT**

IT IS ORDERED AND ADJUDGED that pursuant to this Court's Opinion and Order dated 12 February 2002, this cause of action is DISMISSED WITH PREJUDICE.

Dated at Detroit, Michigan, this 12 February 2002.

BY:
/s/ _____
David J. Weaver
Clerk of the Court

APPROVED:

/s/_____
Lawrence P. Zatkoff
Chief United States District Judge

## APPENDIX E

**UNITED STATES BANKRUPTCY COURT**
**EASTERN DISTRICT OF MICHIGAN**
**SOUTHERN DIVISION**

**CASE NO. 91-02274**
**Chapter 7**
**Hon. Walter Shapero**

**[Filed September 21, 2001]**

| | |
|---|---|
| IN RE: | ) |
| | ) |
| ROSEMARY C. BUTCHER, | ) |
| | ) |
| Debtor. | ) |
| | ) |

**ORDER DENYING DEBTOR'S MOTION FOR PARTITION AND OWELTY, AND/OR FOR SALE OF HER ESTATE'S NON-EXEMPT PROPERTY**

The Court having heard the parties,

HEREBY ORDERS that Debtor's Motion for Partition and Owelty, and/or Sale of her Estate's Non-Exempt Property, be, and it is hereby Denied, as being moot.

IT IS SO ORDERED

/s/ _____
Walter Shapero

## APPENDIX F

**UNITED STATES BANKRUPTCY COURT**
**EASTERN DISTRICT OF MICHIGAN**
**SOUTHERN DIVISION**

**CASE NO. 91-02274**
**Chapter 7**
**Hon. Walter Shapero**

**[Filed September 21, 2001]**

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|---|---|
| IN RE: | ) |
| | ) |
| ROSEMARY C. BUTCHER, | ) |
| | ) |
| Debtor. | ) |
| | ) |

**ORDER CONFIRMING SALE**

At a session of the Court, held in the County of Wayne, in the City of Detroit, in the State of Michigan

Present: Walter Shapero
U.S. Bankruptcy Court Judge

This matter having come on before the Court on the Trustee's request for Amended Notice of Sale and Motion to Confirm Sale, the time for sale as set forth in the Amended Notice having expired and the Court having considered all

objections to the Motion to Confirm Sale and no further bids having been made to the said sale and the Court being further advised in the premises;

NOW THEREFORE;

**IT IS HEREBY ORDERED** that the Sale of the Estate's Interest in Harbor Cove Phase III and part of Phase II consisting of 24 units plus undeveloped land for a total of 17.83 acres, in Little Traverse Township, Emmet County, Michigan to Lawyer's Title Insurance Company on behalf on its insured, legal description attached, is confirmed and

**IT IS FURTHER ORDERED** that said sale is made pursuant to 11 U.S.C. § 363(b).

**IT IS FURTHER ORDERED** that a certified copy of this order may be filed in the Emmet County real property records.

WALTER SHAPERO
U.S. BANKRUPTCY COURT JUDGE

Part of the South ½ of Section 16, T35N, R5W, Little Traverse Township, County of Emmet, and the State of Michigan, described as: commencing at the West 1/4 corner of Section 16, T35N, R5W, Emmet County, Michigan; thence S89°32'30" E 2376.18 feet; thence S9°46'50" W 350.00 feet to the PLACE of BEGINNING; thence S52°12'20" E 1025.94 feet; thence S4°0'E 263.00 feet; thence S54°0'W 93.00 feet; then S44°24'W 439.21 feet; thence along the centerline of Beach Drive on the following courses: N73°41'50"W 368.52 feet and N73°15'W 290.0.0 feet; thence N9°46'S0"E 1088.34 feet to the Place of Beginning, containing 17.83 acres, more or less

Which includes Units 90 through 104 of Harbor Cove Phase II, Emmet County condominium Subdivision Plan No. 19, as recorded in the Master County Records and amendments thereto, and Units 105 through 113 of Harbor Cove Phase II, Emmet County condominium Subdivision Plan No. 49, as recorded in the Master Deed of Harbor Cove Phase III in Liber 344, Pages 901-939, Emmet County Records, pursuant to a deed dated July 12, 1978, recorded on July 14, 1978, in Liber 286, Pages 527, Emmet County Records.

A TRUE COPY
CLERK, U.S. BANKRUPTCY COURT EASTERN DISTRICT OF MICHIGAN

/s/_____
Deputy Clerk

## APPENDIX G

**UNITED STATES BANKRUPTCY COURT**
**EASTERN DISTRICT OF MICHIGAN**
**SOUTHERN DIVISION**

**CASE NO. 91-02274**
**Chapter 7**
**Hon. Walter Shapero**

**[Filed September 21, 2001]**

| | |
|---|---|
| IN RE: | ) |
| | ) |
| ROSEMARY C. BUTCHER, | ) |
| | ) |
| Debtor. | ) |
| | ) |

**ORDER GRANTING**
**MOTION TO TRANSFER LIENS AND**
**INTERESTS TO PROCEEDS OF SALE**

Came on for consideration this day the Motion by Fred J. Dery, in his capacity as Chapter 7 Trustee of Rosemary Butcher to sell the bankruptcy estate's undivided interest in 17.83 acres in Little Traverse Township, Emmet County, Michigan, being a condominium project sometimes known as Phase III and part of Phase II of Harbor Cove Condominiums (Property). The Property is legally described as

Part of the South 1/2 of Section 16, T35N, R5W, Little Traverse Township, Emmet County, Michigan, described as: Commencing at the West 1/4 corner of Section 16, T35N, R5W, Emmet County, Michigan; thence S89°32'30" E 2376.18 feet; thence S 9°46'50" W 350.00 feet to the PLACE OF BEGINNING; thence S 52°12'20" E 1025.94 feet; thence S 4°0' E 263.00 feet; thence S 54°0' W 93.00 feet; thence S 44°24' W 439.21 feet; thence along the centerline of Beach Drive on the following courses: N 73°41'50" W 368.52 feet, and N 73°15' W 290.00 feet; thence N 9°46'50" E 1088.34 feet to the Place of Beginning; containing 17.83 acres more or less.

Which includes Units 90, 91, 92; 93, 94, 95, 996, 97, 98, 99, 100, 101, 102, 103 and 104 of Harbor Cove Phase II, Emmet County Condominium Subdivision Plan No. 19, as recorded in the Master Deed of Harbor Cove Phase II in Liber 290, Pages 272-320, Emmet County Records, and amendments thereto, and Units 105, 106, 107, 108, 109, 110, 111, 112, and 113 of Harbor Cove Phase III, Emmet County Condominium Subdivision Plan No. 49, as recorded in the Master Deed of Harbor Cove Phase III in Liber 433, Pages 901-939, Emmet County Records, pursuant to a deed dated July 12, 1987, recorded on July 14, 1978, in Liber 286, Page 527, Emmet County Records.

The Motion to Transfer Liens and Interests to Proceeds of Sale having been served upon all creditors on the debtor's mailing matrix and other parties in interest, a notice of sale having been published in Detroit newspapers, objection to said sale having been made by Rosemary Butcher, the trustee having conducted an auction of the Property pursuant to the

terms and conditions contained in the Trustee's Motion to Transfer Liens and Interests to Proceeds of Sale, the Court having heard arguments of counsel and finding that due notice of the sale having been made and being otherwise fully advised in the premises, grants the relief as requested.

**IT IS THEREFORE ORDERED** that the sale of the estate's interest in the Property to Lawyers Title Insurance Corporation on behalf of its insurcds in the amount of $225,000.00 is confirmed. From the proceeds of sale, the Intemal Revenue Service federal tax lien will be satisfied. Upon satisfaction of the Internal Revenue Service tax lien, all federal tax liens upon the Property including, but not limited to, those dated September 22, 1987; September 9, 1988, December 23, 1988; April 19, 1989 and March 6, 1990 will be discharged and all notices of Lis Pendens filed by the federal government on behalf of the Intemal Revenue Service will be released. After satisfaction of the federal tax liens, any remaining proceeds of sale will be distributed to the Chapter 7 administrative expense claims and to the joint claims of Rosemary Butcher and her now deceased husband. The estate's undivided interest in the Property is hereby conveyed to Lawyers Title Insurance Corporation on behalf of its insureds and their heirs, successors and assignees free of any claims or interests of Rosemary Butcher (including but not limited to dower interests, if any), Alexander Butcher, the bankruptcy estate of Rosemary Butcher and the probate estate of Alexander Butcher and their heirs, successors and assigns.

**IT IS FURTHER ORDERED** that a certified copy of this Order is to be filed in the Emmet County Real Property records to evidence the state of title in the Property as legally defined as both being legally and equitably vested in the persons on Appendices A and B, their heirs, successors and assigns.

**IT IS FURTHER ORDERED** that pursuant to 11 U.S.C. §363(m), Lawyers Title on behalf of itself and in its insureds has purchased all of the Estate's interest in the Property in "good faith."

IT IS SO ORDERED.

WALTER SHAPERO
U.S. BANKRUPTCY COURT JUDGE

## APPENDIX A

## LIST OF THOSE WHO PURCHASED CONDOMINIUM UNITS IN HARBOR COVE PHASE 11

(a) Jack M. Gale and Davida Gale, Unit 90, by Warranty Deed dated October 22, 1981 and recorded November 24, 1982.

(b) Dr. Peter E. Boss and Jeanette A. Boss, Unit 91, by Warranty Deed dated March 9, 1984.

(c) A.G.A. Studio, Inc., Unit 92, by Warranty Deed dated December 18, 1981 and recorded January 13, 1984.

(d) Kenneth W. Gitlin and Roslyne Gitlin, Unit 93, by Warranty Deed dated March 24, 1982 and recorded November 16, 1982.

(e) Roger L. Gonda and Yvonne E. Gonda, Unit 94, by Warranty Deed dated March 9, 1984 and recorded March 13, 1984.

(f) Anthony J. D'errico and Ann T. D'errico, Unit 95, by Warranty Deed dated November 21, 1981 and recorded November 29, 1982.

(g) T F C Agency, Inc., Unit 96, by Warranty Deed dated Ianuary 28, 1984 and recorded February 7, 1984.

(h) Curtis C. Haan and Margaret J. Haart, and Eleanor Haan, Unit 97, by Warranty Deed dated March 7, 1983 and recorded April 5, 1983.

(i) Irving Shanbom and Patdcis Shanbom, Unit 98, by Warranty Deed dated December 6, 1982 and recorded January 5, 1983.

(j) Gunther S. Meisse and Jeanne R. Meisse, Unit 99, by Warranty Deed dated 3une 27, 1983 and recorded Iune 30, 1983.

(k) Dr. Richard I. Dobies and Florence H. Dobies, Unit 100, by Warranty Deed dated February 16, 1984 and recorded May 7, 1984.

(l) Donald R. Tope, St., Unit 101, by Warranty Deed dated August 7, 1982 and recorded August 13, 1982.

(m) George F. Malley and Barbara C. Malley, Unit 102, by Warranty Deed dated April 21, 1983 and recorded April 29, 1983.

(n) Jobst W. F. Blachy and Lynne A. Blachy, Unit 103, by Warranty Deed dated December 5, 1984 and recorded December 12, 1984.

(o) Steven J. Fishman and Windsor W. Fishmart, Unit 104, by Warranty Deed dated May 20, 1983 and recorded May 31, 1983.

## APPENDIX B

## THOSE WHO PURCHASED CONDOMINIUMS IN HARBOR COVE PHASE III

(a) Northwestern Savings and Loan Association Units 105, 106, 107, 109, I I0, 112, and 113, by Warranty Deed dated January 28, 1987 and recorded February 13, 1987.

(b) Ronald W. Mitchell and Patdda W. Mitchell, Unit 108, by Warranty Deed dated December 5, 1985 and recorded December 5, 1985.

(c) Harry Warholak and Dorothy O. Warholak, Unit 109, by Warranty Deed dated December 20, 1985 and recorded April 7, 1986.

(d) Thomas G. Allshouse and Sheryle K. Allshouse, Unit 111, by Warranty Deed dated August 12, 1985 and recorded August 13, 1985.

## APPENDIX H

**UNITED STATES BANKRUPTCY COURT**
**EASTERN DISTRICT OF MICHIGAN**
**SOUTHERN DIVISION**

**CASE NO. 91-02274**
**Chapter 7**
**Hon. Walter Shapero**

IN RE: )
)
ROSEMARY C. BUTCHER, )
)
Debtor. )
)

**MOTION TO TRANSFER LIENS AND INTERESTS TO PROCEEDS OF SALE**

Now Comes, Fred J. Dery, trustee and for his motion to transfer liens and interests to proceeds of sale sayes:

1. The trustee intends to sell the estate's undivided interest in real property being a condominium project sometimes known as Phase III and part of Phase II of Harbor Cove Condominium, a total of 24 condominium units, plus undeveloped land (by virtue of wetland status) for a total of 17.83 acres

in Little Traverse Township, Emmet County, Michigan. (Real Property) (see attached legal description)

2. This interest is subject to a lien filed by the United States Government (IRS) for delinquent taxes estimated at $170,000.00.

3. The Real Property is also subject to constructive turst in favor of the insureds represented by Lawyers Title Insurance Co. based upon the ruling by the Sixth Circuit Court of Appeals the debtor has attempted to exempt an interest in the Real Property but the trustee and Lawyer's Insurance Co. have objected to the same based on current case law in this circuit.

4. There are also various mortgages, tax liens, liens and encumbrances, on the individual condominiums which are not being effected by this sale or motion.

5. No other liens or interests in the Real Property are known or have been asserted since 1991.

6. The amount owed to the I.R.S. lien will be determined and paid in the proper amount from the proceeds.

7. The claim of Rosemary Butcher to property not in the estate has been adjudicated against her in an action in the Western District of Michigan (affirmed by the 6th Circuit Court of Appeals) and her exemption claims in bona fide dispute.

Wherefore, your trustee prays that all liens claims and encumbrances (except as referred in paragraph 4) and all interests the debtor in the Real Property may be transferred to the proceeds thereof.

/s/_____
Richard F. Fellrath
600 Ford Building
Detroit, MI 48226
(313) 961-3124

## APPENDIX I

## APPEALS NOS 02-1343/1344

## PROFESSIONAL JUDGMENT STATEMENTS IN SUPPORT OF DEBTOR'S PETITION FOR REHEARING EN BANC

Robert E. Butcher, attorney for Debtor, states:

I

I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to the following decision(s) of the United States Court of Appeals for the Sixth Circuit or the Supreme Court of the United States and that consideration by the full Court is necessary to secure and maintain uniformity of decisions:

1. *United States v. Craft,* 122 S Ct 1414 (2002)

II

I express a belief, based on a reasoned and studied professional judgment, that this appeal involves one or more questions of exceptional importance: [set forth each question in one sentence].

A. Did the Western District Court (of Michigan) or this Court have subject matter jurisdiction over the 17.83 acres of real property described in the

Orders/Judgments flied in *Blachy v. Butcher,* 221 F 3rd 896 (2000).

B. Did the Western District Court, or this Court, have personal jurisdiction, in *Blachy,* over Rosemary, who has been in Chapter 7 bankruptcy since March 1, 1991, or, over her entireties interest in the 17.83 acres?

C. Did Alexander have any property interest, after October 30, 1991, in the 17.83 acres after conveying his interest to his wife, Rosemary?

D. Can an interspousal release or conveyance of the grantor's interest in entireties land be fraudulent as to the claims of private claimed creditors of the grantor spouse?

E. Did Alexander, as a tenant by the entireties, ever own the real property or any part of it?

F. Did the Government have a valid lien on Alexander's interest in the property on November 18, 1991, the removal date of the suit to this Court, after he had conveyed his interest to Rosemary on October 30, 1991?

G. Did the stipulation and release of the Government, and by Order of Judge Shapero and by payment to the IRS, release Rosemary and her bankruptcy estate from further personal liability in this matter?

H. Did Plaintiffs or their counsel ever have standing to bring an action against Alexander or Rosemary "for the benefit of Alexander's corporations, Little

Traverse Development Co ("LTDC"), and Harbor Cove Development Co ("HCDC"), and assorted non-insured Plaintiffs?"

I. Has Lawyers Title by its deliberate misrepresentations, committed fraud upon the Court?

J. Did the suit became moot on October 30, 1991, when the deed conveying his interest in the 17.83 acres to Rosemary was delivered?

K. Did the Michigan Circuit Court ever have jurisdiction?

DATED: March 3, 2003

/s/_____

Robert E. Butcher, P11478
Attorney for Appellant
9505 Groh Road
PO Box 900
Grosse Ile, Michigan 48138
(734)675-3990

## APPENDIX J

**UNITED STATES BANKRUPTCY COURT**
**EASTERN DISTRICT OF MICHIGAN**
**SOUTHERN DIVISION**

**CASE NO. 91-02274-S**
**Chapter 7**
**Hon. Walter Shapero**

**[Filed May 13, 1993]**

| | |
|---|---|
| IN RE: | ) |
| | ) |
| ROSEMARY C. BUTCHER, | ) |
| | ) |
| Debtor. | ) |
| | ) |

**STIPULATION AND AGREED ORDER AS TO DEBTOR'S OBJECTION TO IRS PROOF OF CLAIM AND DISCHARGEABILITY OF DEBTOR'S 1986 INCOME TAX LIABILITY**

The debtor and the United States of America, by their undersigned counsel, hereby stipulate and agree as follows:

1. That the debtor's assessed 1986 federal income tax liability is dischargeable;

2. That the United States expressly reserves the question of

whether its federal tax liens against the debtor's husband, Alexander Butcher, attached to Alexander Butcher's interest in the Harbor Cove property when it was conveyed to the debtor by quit claim deed, recorded by the Emmet County Register of Deeds on November 1, 1991, Liber 455, Page 664;

3. That the IRS' claim for civil penalties against the debtor, as set forth in its Second Amended Proof of Claim, are hereby withdrawn with prejudice;

4. That each party hereto shall bear its own costs and attorney's fees in this proceeding.

For United States of America, Defendant

/s/_____
John Lindquist
Trial Attorney, Tax Division
U.S. Department of Justice
PO Box 55
Ben Franklin Station
Washington, D.C. 20044
(202) 307-6561

For Rosemary Butcher, Plaintiff/Debtor

/s/ _____
Robert E. Butcher
3133 Van Horn, PO Box 475
Trenton, MI 48183
(313) 675-3990

[fold out exhibit]

**Certificate of Release of Federal Tax Lien**

Form 668(Z)
(Rev. April 1984)

Department of the Treasury - Internal Revenue Service

# Certificate of Release of Federal Tax Lien

| District | Serial Number | For Optional Use by Recording Office |
|---|---|---|
| Detroit | 389200635 | UCC No: 10 619<br>LIBER/PAGE 458 -391 |

I certify that as to the following-named taxpayer, the requirements of section 6325 (a) of the Internal Revenue Code have been satisfied for the taxes listed below and for all statutory additions. Therefore, the lien provided by Code section 6321 for these taxes and additions has been released. The proper officer in the office where the notice of internal revenue tax lien was filed on December 19 19 91, is authorized to note the books to show the release of this lien for these taxes and additions.

**Name of Taxpayer**

ALEXANDER M BUTCHER & ROSEMARY C BUTCHER

**Residence**

29555 LAUREL WOODS DR APT 207
SOUTHFIELD, MI 48034

| Kind of Tax (a) | Tax Period Ended (b) | Identifying Number (c) | Date of Assessment (d) | Last Day for Refiling (e) | Unpaid Balance of Assessment (f) |
|---|---|---|---|---|---|
| 6672 | 12/31/88 | 376-32-6206 | 12/04/89 | 01/03/00 | 10833.99 |
| 6672 | 12/31/88 | 376-32-6206 | 12/11/89 | 01/01/00 | 11495.24 |
| 6672 | 09/30/89 | 376-32-6206 | 09/24/90 | 10/24/00 | 11554.20 |
| 6672 | 06/30/90 | 376-32-6206 | 10/30/90 | 11/29/00 | 13349.32 |
| | This releases the federal tax lien with respect to Rosemary C. Butcher for the period(s) 12/31/88 09/30/89, 06/30/90 but not with respect to Alexander M. Butcher. | | | | |
| Place of Filing | REGISTER OF DEEDS<br>EMMET COUNTY<br>PETOSKEY, MI 49770 | | | Total | $ 47232.75 |

This certificate was prepared and signed at 477 MichiganAve., Detroit, MI 48226, on this, the 14th day of November, 19 94.

Signature MICHAEL COPELAND

Title REVENUE OFFICER -SPB

(NOTE: Certificate of officer authorized by law to take acknowledgements is not essential to the validity of Certificate of Release of Federal Tax Lien Rev. Rul. 71-466, 1971-2 C.B. 409)

BEST AVAILABLE COPY

## APPENDIX K

**UNITED STATES BANKRUPTCY COURT**
**EASTERN DISTRICT OF MICHIGAN**
**SOUTHERN DIVISION**

**CASE NO. 91-02274**
**Chapter 7**
**Hon. Walter Shapero**

IN RE: )
)
ROSEMARY C. BUTCHER, )
)
Debtor. )
)

**MOTION TO DISTRIBUTE**

Now comes Fred J. Dery, trustee and pursuant to Rule 3009 and the dictates of Matter of Grosslight, 757 F2d 773 (6th Cir, 1985) prays for an order of distribution and sayes;

1. This case was filed in 1991 by the debtor.

2. After payment of the IRS claim and administrate claims and there remains in the estate the sum of 10,446.55.

3. Except for additional attorney tees which are being herewith requested there remains only distribution

to joint creditors.

4. Their remain 4 joint claims: Old Kent bank for 12,000.00, Northwestern Saving & Loan 129,864.00, E. Jerome McCarthy (approved claim) 228,294.17 and Ralph Bergsma 216,476.00.

Wherefore your trustee prays that pursuant to the dictates of In re Trickett, 5 CBC 2d 85, ( Bkcy WD MI, 1981) and Matter of Grosslight 757 F 2d 773 (6th Cir, 1985) that an order be entered allowing the trustee to make payment of funds reaming after payrnent of any allowed attorney fees in the following percentages to the creditor or their successes

(A) Old Kent Bank - 2%

(B) Northwest Saving & Loan - 22%

(C) E. Jerome McCarthy -39%

(D) Ralph Bergsma -37%

/s/_____
Richard F. Fellrath
Attorney at Law
615 Griswold St., Ste. 600
Detroit, MI, 48226

## APPENDIX L

**UNITED STATES BANKRUPTCY COURT**
**EASTERN DISTRICT OF MICHIGAN**
**SOUTHERN DIVISION**

**CASE NO. 91-02274-s**
**Chapter 7**
**Phillip J. Shefferly**

**[Filed May 16, 2003]**

| | |
|---|---|
| IN RE: | ) |
| | ) |
| ROSEMARY C. BUTCHER, | ) |
| | ) |
| Debtor. | ) |
| | ) |

**ORDER AUTHORIZING FINAL DISBURSEMENT**

At a session of said Court, held in the
City of Detroit, County of Wayne
State of Michigan May 16, 2003
Phillip J. Shefferly
US Bankruptcy Judge

This matter having come BEFORE THE Court on the Motion of the trustee for an order authorizing final distribution, notice having been giving to the debtor and

creditor and the Court being advise in the premises.

**NOW THEREFORE;**

IT IS HEREBY ORDERED that the Trustee is authorized to distribute funds on hand first to approved counsel fees and the trustee expenses and then to the following creditors or their successors percentages

(A) Old Kent Bank 2%
(B) Northwest Saving & Loan 22%
(C) E. Jerome McCarthy 39%
(D) Ralph Bergsma 37%

## APPENDIX M

[p.23]

MR. BUTCHER: I would ask one -- one thing, that if the Court were to agree or grant the trustee's motion, that it stay sale pending the -- an appeal.

THE COURT: So tell me what your defense is to the motion to sell. That's what I want to know.

MR. BUTCHER: My defense is that they're trying to sell too much.

THE COURT: Too much?

MR. BUTCHER: Yes.

THE COURT: What do you mean?

MR. BUTCHER: They're trying to --

THE COURT: He's trying to sell the -- the bankruptcy estate's entire interest in this property.

MR. BUTCHER: But the -- section that he's relying on says that he can sell the whole property, not --

THE COURT: The -- the -- the section that relates to say -- to sell of property with co-tenants is really not at issue. We're not selling the whole property here. And the co-tenant, being the constructive beneficiaries of the -- being the beneficiaries of the constructive trust, have consented. So this

is just --

MR. BUTCHER: Well --

THE COURT: -- in effect, substantively, a straight out sale of property as if Mr. Fellrath had widgets to sell.

MR. BUTCHER: Is your -- your Honor suggesting that

[p.27]

MR. LERNER: Just one thing very quickly, your Honor. Mr. – just as aside, I don't think there is an exemption. She doesn't have it. This property is not her homestead and is subject to joint claims, anyway.

The -- Mr. Butcher did ask that the -- if the Court does grant the motion, that there be a stay pending appeal. We would vigorously oppose any stay pending appeal.

THE COURT: You don't need to go any further. That's a separate issue.

MR. LERNER: Okay. That's a separate issue. Right.

THE COURT: I will make a ruling, an order will be entered, the time will start to run.

MR. LERNER: Right.

THE COURT: If an appeal is taken and a stay is desired, that's a separate proceeding --

MR. LERNER: Good.

THE COURT: -- under the court rules which comes before me, I think in the first instance.

MR. LERNER: Perfect. Yeah.

THE COURT: And we'll just proceed the way the rules have laid this out from time in memoriam

MR. LERNER: Perfect. Thank you.

THE COURT: Thank you. I'm granting the motion to sell and will sign an appropriate order for the reasons I think that I have indicated. I see no bar to the sale in this [p.28] case. I think the process under which the trustee has proceeded to achieve the best possible price has in fact been achieved.

There is, in my view, no likely buyer other than the present owners of the condominium, essentially to get rid of litigation more than anything else. I don't think anyone in the world would buy whatever the trustee's interest is in this property, for much more than what was previously offered, nominal $2,000 or $5,000, when this matter first came up, and I think this -- the results of this sale is the best that can be achieved under the indicated, and I think non-controverted circumstances in this case. So.I will sign the -- an order effectuating that.

MR. BUTCHER: Your Honor, would it be your Honor's ruling that whatever the sale price might be, that the Debtor could match it and purchase that interest?

THE COURT: No.

MR. BUTCHER: I see.

THE COURT: The motion is to authorize the sale to Mr. Lerner's client. If I thought that the process would produce a better result, I would do so. I haven't heard that. And I don't think at this point in time it would do so.

So the Motion is, I believe, Mr. Fellrath, not to put it up for an auction and to get the best - but to sell it to Mr. Lerner's client, is it not?

* * * * *

## APPENDIX N

**UNITED STATES BANKRUPTCY COURT**
**EASTERN DISTRICT OF MICHIGAN**
**SOUTHERN DIVISION**

**CASE NO. 91-02274-S**
**Chapter 7**
**Hon. Walter Shapero**

**[Filed January 20, 1998]**

IN RE:

ROSEMARY C. BUTCHER,

Debtor.

JOBST W.F. BLACHY, et al.,
jointly and severally,
Plaintiffs,

v.

ROSEMARY C. BUTCHER, et al.,
Defendants.

Adversary Proceeding
No. 92-0173

JOBST W.F. BLACHY, et al.,
jointly and severally,
Plaintiffs,

Adversary Proceeding
No. 93-4819

v.

ALEXANDER M. BUTCHER, et al.,
Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION TO TRANSFER VENUE AND TO LIFT AUTOMATIC STAY**

**CAME ON FOR CONSIDERATION** this day Plaintiffs Motion to Transfer Venue of Count I of adversary proceeding 93-4819 to the United States District Court for the Western District of Michigan, the Court having reviewed the Motion and after argument of counsel and being otherwise fully advised in the premises, grants the Plaintiffs Motion to Transfer Venue.

**IT IS THEREFORE ORDERED** that Count I of Adversary proceeding no. 93-4819 (being Count I of Case no. 1:91-CV-979 having been transferred from United States District Court Judge Gibson of the Western District to this Court in 1993) be transferred back to the United States District Court, Western District of Michigan for adjudication of constructive trust in the reactivated Case no. 1:91-CV-979.

**IT IS FURTHER ORDERED** that the Automatic Stay be lifted to permit Lawyers Title Insurance Corporation on behalf of itself and its insureds to file a Motion in the United States District Court for the Western District of Michigan to add Rosemary Butcher as a named defendant in Adversary Proceeding no. 93-4819 (Case no. 1:91-CV-979).

**IT IS FURTHER ORDERED** that to the extent the automatic stay is applicable, the automatic stay is hereby lifted to permit Lawyers Title Insurance Corporation on behalf of itself and its insureds to file a Motion in the United States District Court for the Western District of Michigan to add an additional count against Alexander and Rosemary Butcher for an alleged fraudulent conveyance relating to the recordation of the Quit Claim Deed recorded November 1, 1991.

**IT IS FURTHER ORDERED** that the case caption in 93-4819 (Case no. 1:91-CV-979) be amended to reflect that Rosemary Butcher and Robert Butcher as Co-Personal Representatives have been substituted for the interest of Alexander M. Butcher, deceased.

**IT IS SO ORDERED.**

Walter Shapero
U.S. BANKRUPTCY COURT JUDGE

Submitted by:

PLUNKETT & COONEY, P.C.
By: David A. Lerner Co-counsel for Plaintiffs

Jeffrey Raphelson
Howard & Howard
Co-Counsel for Plaintiffs

## APPENDIX O

**U.S. Department of Justice**
**Tax Division**

*Facsimile No. (202) 514-5238*
*Trial Attorney: John A. Lindqust*
*Attorney's Direct Line: (202) 307-6561*

*Please reply to:*

*Civil Trial Section, Northern Region*
*P.O. Box 55*
*Ben Franklin Station*
*Washington, D.C. 20044*

EJO'C:DPM:JALindquist
5-37-7851 CMN 1992165562

David A. Lerner, Esq.
Plunkett & Cooney
38505 Woodward Avenue
Suite 3000
Bloomfield Hills, MI 48304

May 31, 2002

Re: In re: Rosemary C. Butcher, Case No. 91-02274-S Bkrtcy. Adv. Nos. 92-0173 and 93-4819 (USBC EDMI)

Dear Mr. Lerner:

This letter is to confirm our receipt on April 19, 2002, of a payment from the trustee in the amount of $189,775.49, and a payment on May 29, 2002, in the amount of $1,534.66 in the above-referenced matter. These payments fully satisfy the 1986 federal income tax liability of Rosemary C. Butcher and, upon application of the funds, the 1986 federal income tax lien will be full paid and released by operation of law.

In the prior case of Jobst W. F. Blachy, et al. v. Alexander M. Butcher, et al., File No. 1:91-CV-979 (USDC WDMI), by order dated December 14, 1998, the District Court determined that the United States' federal tax liens against Alexander and Rosemary Butcher, including those notice of which was recorded September 22, 1987, September 9, 1988, December 23, 1988, April 19, 1989 and March 6, 1990, were subordinate to the interests of the plaintiffs listed above or entities claiming title through them and that the tax liens did not attach to the subject property. Further, the District Court has ordered that a certified copy of said Order be filed in the Emmet County real property records to evidence the state of title. To protect its interests pending appeal, the United States recorded a Notice of Lis Pendens. On appeal the judgment of the District Court;was reversed, but only with respect to the 1986 joint federal income tax liability of Alexander and Rosemary Butcher. Insofar as that liability has now been paid in full, enclosedplease find a copy of a Release being filed with Emmet County.

Thank you for your assistance in this matter. If you have any questions, please contact me at 202/307-6561.

Sincerely yours,

John A. Lindquist
Trial Attorney
Civil Trial Section
Northern Region

cc:

Julia Caroff, Esquire
Assistant U.S. Attorney
919 Federal Building
231 West Lafayette
Detroit, Michigan 48226

Phoebe Nearing, Esquire
Associate Area Counsel
Internal Revenue Service
1870 McNamara Federal Building
477 Michigan Avenue - Stop 31
Detroit, Michigan 48226

Your ref: GL-63-92
Unknown

## APPENDIX P

## SUMMARY OF UNIT ASSESSMENTS AS OF MARCH 8, 2001

**Phase II**

| Unit No. | Current Assessment – one/half of Market Value |
|---|---|
| 90 | $124,700.00 |
| 91 | 90,900.00 |
| 92 | 85,400.00 |
| 93 | 111,600.00 |
| 94 | 128,500.00 |
| 95 | 90,900.00 |
| 96 | 85,400.00 |
| 97 | 111,600.00 |
| 98 | 106,700.00 |
| 99 | 86,900.00 |
| 100 | 89,300.00 |
| 101 | 129,000.00 |
| 102 | 119,800.00 |
| 103 | 90,700.00 |
| 104 | 124,400.00 |
| | **$1,575,800.00** |

**Phase III**

| Unit No. | Current Assessment – one/half of Market Value |
|---|---|
| 105 | 121,500.00 |
| 106 | 88,100.00 |
| 107 | 88,000.00 |
| 108 | 121,500.00 |
| 109 | 121,500.00 |
| 110 | 93,600.00 |
| 111 | 93,600.00 |
| 112 | 105,300.00 |
| 113 | 121,500.00 |
| | $954,600.00 |

Market Value 2x

$2,530,400.00 =

**$5,060,800.00**